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OFFICE OF PETITIONS

In re Application of
Michael Panosian
Application No. 10/706,491
Filed: November 12, 2003
Attorney Docket No. CAHD/0008

ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed October 23, 2006, to revive the above-identified application. The delay in responding is regretted.

The petition is **DISMISSED**.

The application became abandoned for failure to respond to the non-final Office action mailed December 8, 2005. A Notice of Abandonment was mailed on October 5, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (3).

With respect to item (3), the petition cannot be granted since it appears that petitioner was not a representative of the owner at the time of abandonment. This application was abandoned on March 9, 2006 and petitioner did not acquire interest in this application until June 29, 2006, which is the date of execution of the assignment document in the USPTO. Unfortunately, petitioner is not deemed to be in a position to make the statement of unintentional delay.

Further, a review of USPTO assignment records indicate that Olympia Group, Inc. was responsible for prosecuting the above application when the response was due to avoid abandonment. Since the Office must determine if the failure to timely respond was in fact unintentional, the statement must be made by the party of interest at the time of abandonment.

When the issue of revival is addressed, the focus must be on the rights of the party or parties as of the date of abandonment. See *Kim v. Quigg*, 718 F.Supp. 1280, 1284, 12 USPQ 1604, 1607 (E.D. Va. 1989).

Since petitioner was not associated with the application at the time of abandonment, he is not in a reasonable position to make the statement of unintentional delay. However, petitioner may wish to indicate that such statement is or was made after an inquiry into the underlying facts and circumstances surrounding the unintentional delay in timely submitting the required reply to the Office action. See 37 CFR 10.18.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries concerning this decision should be directed to the undersigned at **(571) 272-3226**.



Andrea Smith
Petitions Examiner
Office of Petitions